



## Michigan Supreme Court

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Thomas P. Boyd  
State Court Administrator

### MEMORANDUM

DATE: January 12, 2023

TO: Judges  
Court Administrators  
County Clerks

FROM: Thomas P. Boyd, State Court Administrator

SUBJECT: Access to Juvenile Records – Bipartisan Safer Communities Act

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#### Background

The Bipartisan Safer Communities Act ([Public Law 117-159](#)) establishes an enhanced background check for firearms transfers to persons under 21 years of age. A person may not sell or dispose of a firearm to any person who has a disqualifying juvenile record as identified in 18 USC 922(d). Disqualifying juvenile records include, but are not limited to, a juvenile who:

- Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- Is an unlawful user of or addicted to any controlled substance;
- Is a fugitive from justice;
- Has been adjudicated as a mental defective or committed to any mental institution at 16 years of age or older; or
- Is subject to certain personal protection orders.

Under 18 USC 922(t)(1)(C) and 34 USC 40901(l), the National Instant Criminal Background Check System (NICS) must determine within three business days whether cause exists to further investigate a possibly disqualifying juvenile record under 18 USC 922(d). If cause exists for further investigation, NICS must determine within ten business days<sup>1</sup> whether transferring the firearm would violate 18 USC 922(d), (g), (n) or any state, local, or Tribal law.

When investigating possible disqualifying juvenile records, NICS is required to immediately contact the following agencies in the state where the person resides:

- The criminal history repository or juvenile justice information system.
- The appropriate state custodian of mental health adjudication records.

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<sup>1</sup> Note that the ten business day determination period includes the three business days for determining whether cause exists. Both time periods commence at the time the Licensee contacts NICS. See 18 USC 922(t)(1)(C)(iii).

- A local law enforcement agency of the jurisdiction in which the person resides.

See [34 USC 40901\(l\)\(1\)](#).

### **Impact on Courts**

NICS might begin requesting juvenile case information from circuit and probate courts to determine whether a person has a disqualifying juvenile record. As noted above, these requests are time sensitive. NICS must complete its initial investigation within three business days. For cause investigations may not exceed ten business days.

Before releasing any juvenile information, courts should carefully consider the nature of the request and whether disclosure is permitted under Michigan law or the Michigan Court Rules. SCAO's [Nonpublic and Limited-Access Court Records Chart, section D](#), provides a summary of access to juvenile case records.

#### *Legal File*

[MCL 712A.28](#) makes records of a case brought before the family division of the circuit court nonpublic and only allows access to persons having a legitimate interest.<sup>2</sup> [MCL 712A.2f](#) governs access to consent calendar cases and [MCL 722.827](#), [MCL 722.828](#), and [MCL 722.829](#) govern access to juvenile diversion records.

#### *Social File*

Courts maintain a separate social file as defined in MCR 3.903(A)(3)(b). Access to documents contained in the confidential social file is provided under MCR 3.925(D)(2). The social file is only open to persons who are found by the court to have a legitimate interest. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law. MCR 3.925(D)(2).

### **Minor Mental Health Proceedings – Court Orders**

Civil admission and discharge procedures for emotionally disturbed minors is governed by [MCL 330.1498a](#), *et seq.* Both [MCL 330.1498n\(3\)](#) and [MCL 330.1498o\(5\)](#) provide that a judicial hearing on the issue of hospitalization is governed by sections MCL 330.1451 to MCL 330.1465. When a court order is issued for either involuntary hospitalization, or for a combination of involuntary hospitalization and assisted outpatient treatment, the court **shall** order the department of state police to enter a court order into the law enforcement information network (LEIN) pursuant to [MCL 330.1464a\(1\)](#). The removal of these orders from LEIN only occurs upon further order of the court.

Please contact your [regional administrative office](#) with any questions.

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<sup>2</sup> “Persons having a legitimate interest” includes, but is not limited to, the juvenile, the juvenile's parent, the juvenile's guardian or legal custodian, the juvenile's guardian ad litem, counsel for the juvenile, the department or a licensed child caring institution or child placing agency under contract with the department to provide for the juvenile's care and supervision if related to an investigation of child neglect or child abuse, law enforcement personnel, a prosecutor, a member of a local foster care review board established under 1984 PA 422, MCL 722.131 to 722.139a, the Indian child's tribe if the juvenile is an Indian child, and a court of this state. MCL 712A.28(5)(d).